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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,736	12/11/2001	Yann Guelou	15675P287c	1759

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EXAMINER	
BLACKNER, HENRY A	

ART UNIT	PAPER NUMBER
3641	

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/020,736	Applicant(s) GUELOU ET AL.
	Examiner Henry A. Blackner	Art Unit 3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 August 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 5-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *13-16* is/are allowed.

6)☒ Claim(s) *1-3,5-9,11 and 12* is/are rejected.

7)☒ Claim(s) *10* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on *18 August 2003* is: a)☐ approved b)☒ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the deployment of the invention (*figure 1, stage 1*), which states that the invention is deployed from the aft deck of a ship, page 5 lines 6-7, as described in the specification. Figure 1, Stage 1, illustrates that the deployment of the invention is launched from the bow section of the ship, as per the trajectory of the launches, and that the illustrated wake vector (S) is directed as forward momentum. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 2,637,536 to De Ment.

In regards to claim 1, De Ment clearly illustrates a device comprising of a body of effervescent material that reacts with sea water to generate a cloud of bubbles capable of simulating a phony wake, the device being characterized in that it has a covering of material that

is soluble in sea water, which delays the reaction of the effervescent material with sea water, in column 6 lines 23-30.

In regards to claim 2, De Ment clearly illustrates a device according to claim 1, characterized in that the covering is made of organic material, in column 6 lines 23-30.

In regards to claim 3, De Ment clearly illustrates a device according to claim 2, characterized in that a thickness of the covering is calibrated, so that when said device is immersed, the effervescent material begins to react with sea water only after said device is immersed for a predetermined length of time, in column 4 lines 60-65 and column 6 lines 23-30.

In regards to claim 6, De Ment clearly illustrates a device according to claim 1, characterized in that the effervescent material comprises a mixture of tartaric acid and of sodium hydrogen carbonate, in column 5 lines 25-30 and lines 42-62.

In regards to claim 7, De Ment clearly illustrates a device according to claim 1, characterized in that the effervescent material comprises a mixture of citric acid and of sodium hydrogen carbonate, in column 5 lines 25-30 and lines 42-62.

In regards to claim 8, De Ment clearly illustrates a device according to claim 7, characterized in that the mixture is substantially stoichiometric, in column 5 lines 25-40 and lines 42-62.

In regards to claim 9, De Ment clearly illustrates a device according to claim 1, characterized in that the effervescent material includes a lubricant, in column 6 lines 1-9.

In regards to claim 11, De Ment discloses the claimed invention except for illustrating that the dimensions of the bubbles that are generated at a depth of 10 meters are in the range of 30μm to 50μm. Since De Ment has the same material as that claimed including a weighted mass

that would allow the device to sink to 10 meters, the device would inherently have the same characteristics and thus the same bubble size as claimed.

In regards to claim 12, De Ment clearly illustrates a device according to claim 1, characterized in that it further includes ballast-forming means, for the purpose of enabling it to sink faster, in column 4 lines 60-65.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Ment.

De Ment discloses the claimed invention except for describing that the covering is made of a material, which is a gum of vegetable or animal origin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a sugar as a delayed action covering, since it was known in the art that high-polymer sugars occur as water-soluble

gums such as arabic, which is produced from the dried water-soluble exudate from the stem of Acacia Senegal or related species.

Allowable Subject Matter

The following is an examiner's statement of reasons for allowance:

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 13 is allowed, since the art of record does not show alone or in combination: a torpedo decoying method, comprising dispersing decoy devices in the sea from the air.

Claim 14 is allowed.

Claim 15 is allowed, since the art of record does not show alone or in combination: wherein a thickness of the covering is calibrated so that when said device is immersed, the effervescent material begins to react with sea water only after said device has been sinking for a predetermined length of time and is at a depth of about 10 meters.

Claim 16 is allowed, since the art of record does not show alone or in combination: wherein a thickness of the covering is calibrated so that when said device is immersed, the effervescent material begins to react with sea water only after said device has been sinking for a predetermined length of time and is at a depth of about 10 meters.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

Applicant's arguments filed 18 August 2003 have been fully considered but they are not persuasive.

In regards to the section of the argument directed toward: "that the Patent Office has not identified and Applicants have been unable to find any description in De Ment of a device that reacts with sea water", is not persuasive, since the invention disclosed in De Ment reacts with water, it is inherently obvious that the afore mentioned invention will react in sea water. As to limitations which are considered to be inherent in a reference, note the case law of *In re Ludke*, 169 USPQ 563; *In re Swinehart*, 169 USPQ 226; *In re Fitzgerald*, 205 USPQ 594; *In re Best et al*, 195 USPQ 430; and *In re Brown*, 173 USPQ 685, 688.

In regards to the section of the argument directed toward: "that the Patent Office has not identified and the Applicants have been unable to find any description in De Ment of a decoy device for wake-following torpedoes", is not persuasive, since MPEP § 2114 states " that a claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all structural limitations of the claim". *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry A. Blackner whose telephone number is 703-305-4799. The examiner can normally be reached on 09:15 - 17:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

hab
30 September 2003